

Mar 20, 2018

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

JENNIFER JOYCE DOUGLAS,

Defendant.

No. 1:16-CR-02085-SMJ

**ORDER ADOPTING REPORT
AND RECOMMENDATION,
SETTING SENTENCING, AND
ESTABLISHING SENTENCING
BRIEFING SCHEDULE**

Before the Court is Magistrate Judge Dimke's February 16, 2018 Report and Recommendation, ECF No. 91, recommending that the Court find Defendant's plea of guilty is knowing, intelligent, and voluntary and is not induced by fear, coercion, or ignorance. No objections have been filed.

After reviewing the Report and Recommendation, and relevant authorities, the Court finds the Magistrate Judge's findings are correct. Therefore, the Court adopts the Report and Recommendation in its entirety.

However, acceptance of the plea agreement is deferred until sentencing when the Court will have the benefit of a Presentence Investigation Report.

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Accordingly, **IT IS HEREBY ORDERED:**

1. The Report and Recommendation, **ECF No. 91**, is **ADOPTED** in its entirety.

2. The Court finds that Defendant's guilty plea to Counts One and Three is knowing, intelligent, and voluntary and is not induced by fear, coercion, or ignorance. The Court finds this plea is given with the knowledge of the charged Second Degree Murder and Discharge of A Firearm During the Commission of a Crime of Violence, the essential elements of the charged Second Degree Murder and Discharge of a Firearm During the Commission of a Crime of Violence, the Government's evidence of the charged Second Degree Murder and Discharge of a Firearm During the Commission of a Crime of Violence, and the consequences of pleading guilty. The Court further finds that the facts admitted to by Defendant in open court constitute the essential elements of the Second Degree Murder and Discharge of a Firearm During the Commission of a Crime of Violence charged.

3. Defendant's guilty plea to Counts One and Three is **ACCEPTED**.

4. All pending motions are **DENIED AS MOOT**.

5. The trial date is **STRICKEN**.

1 **6.** In the event an Order is entered permitting withdrawal of the guilty
2 plea, Speedy Trial Act time will be calculated consistent with 18
3 U.S.C. § 3161(i).

4 **7.** The date of the sentencing is **Wednesday, June 13, 2018, at 11:30**
5 **A.M. in YAKIMA.**

6 **8.** If a sentence of incarceration is imposed, Defendant shall be placed
7 in custody at the time of sentencing. Sentencing will be scheduled
8 for a total of forty-five (45) minutes. If it is believed that the
9 sentencing hearing will last longer, counsel shall contact Chambers
10 within fourteen (14) days of disclosure of the presentence
11 investigation report. Pending sentencing, Defendant's detention
12 status or release status shall remain pursuant to this court's previous
13 order. The United States Probation Office shall prepare a timely
14 presentence investigation report that will comply with the following
15 schedule:

- 16 1. Not less than **thirty-five (35) days** prior to the sentencing
17 hearing, the probation officer shall disclose the pre-sentence
18 investigation report to the Defendant, counsel for Defendant,
19 and the Government.

1 2. Within **fourteen (14) days** of the disclosure of the pre-
2 sentence investigation report, counsel shall communicate in
3 writing to the probation office any objections they may have as
4 to factual errors or omissions; sentencing classifications;
5 sentencing guideline ranges; and policy statements contained
6 in or omitted from the report. Such communication may be
7 oral initially but shall immediately be confirmed in writing to
8 the probation officer and opposing counsel.

9 3. Also within **fourteen (14) days** of disclosure of the
10 presentence investigation report, counsel shall file and serve all
11 motions and memoranda pertaining to Defendant's sentence,
12 including motions for downward or upward departures.
13 Counsel shall utilize the following format when preparing
14 initial memoranda which are limited to twenty pages (absent
15 prior Court permission to file an over length brief): I. Base
16 Offense Level & Enhancements, II. Departures, III. 18 U.S.C.
17 3553(a). Under the "Base Offense Level & Enhancements"
18 section, counsel shall discuss whether the PSIR's Total Offense
19 Level calculations (not including departures) are correct or
20 incorrect, providing legal authority for the party's position.

1 Under the "Departure" section, counsel shall discuss whether a
2 downward and/or upward departure is warranted under the
3 Guidelines and provide legal authority for such position.
4 Under the "18 U.S.C. 3553(a)" section, counsel shall discuss
5 whether the resulting guideline range provides a reasonable
6 sentence sufficient, but not greater than necessary, to comply
7 with the purposes set forth in 18 U.S.C. 3553(a)(2),
8 considering the other factors listed in 3553(a). The parties are
9 limited to one reply of no more than 7 pages. No other
10 pleadings are allowed without advance permission of the
11 Court. **FAILURE TO FILE AND SERVE A MOTION**
12 **FOR DOWNWARD DEPARTURE WITHIN 14 DAYS OF**
13 **RECEIPT OF THE PRESENTENCE INVESTIGATION**
14 **REPORT WILL BE DEEMED A WAIVER OF THE**
15 **RIGHT TO DO SO.** The time frame for filing and serving
16 responses to such motions shall be governed by Local Criminal
17 Rule 45. Any request with regard to self-reporting shall be
18 made to the probation office at the same time any
19 objections/motions are filed.
20

1 4. After receiving counsel's objections, the probation officer shall
2 conduct any further investigation and make any revisions to
3 the presentence report that may be necessary. The probation
4 officer may require counsel for both parties to meet with the
5 officer to discuss unresolved factual and legal issues, and
6 counsel shall make themselves available for that purpose.

7 5. At least **ten (10) days** prior to the date of the sentencing
8 hearing the probation officer shall submit the presentence
9 report to the sentencing judge. The report shall be
10 accompanied by an addendum setting forth any objections
11 counsel may have made, including those that have not been
12 resolved, together with the officer's comments and
13 recommendations thereon. The probation officer shall certify
14 that the contents of the report other than sentencing
15 recommendations, including any revisions or addenda, have
16 been disclosed to counsel for Defendant and the Government,
17 and that the addendum fairly states any remaining objections.

18 6. Except with regard to any written objection made under
19 subdivision (a), the report of the presentence investigation and
20 computations shall be accepted by the Court as accurate. For

1 good cause shown, however, the court may allow a new
2 objection to be raised at any time before the imposition of
3 sentence. In resolving disputed issues of fact, the court may
4 consider any reliable information presented by the probation
5 officer, Defendant, or the Government.

6 7. Nothing in this rule requires the disclosure of any portions of
7 the presentence report that are not disclosable under Rule 32 of
8 the Federal Rules of Criminal Procedure.


9 8. The presentence report shall be deemed to have been disclosed
10 (1) when a copy of the report is physically delivered; or (2) one
11 day after the availability of the report for inspection is orally
12 communicated; or (3) three days after a copy of the report, or
13 notice of its availability is mailed to counsel, whichever date is
14 earlier.

15 9. Following sentencing, Defendant shall be taken into the
16 custody of the United States Marshal Service unless (1)
17 Defendant has been released prior to sentencing, (2) Defendant
18 specifically requests the opportunity to self-report, and (3)
19 Defendant demonstrates that he is a candidate for self-
20 reporting. If Defendant requests the opportunity to self-report,

1 Defendant must demonstrate the financial ability to travel to a
2 facility on the East Coast.

3 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this order
4 and to provide copies to counsel, the U.S. Probation Office, the U.S. Marshals
5 Service, and Magistrate Judge Dimke.

6 **DATED** this 20th day of March 2018.

7 
8 SALVADOR MENDEZ, JR.
United States District Judge